

Laverdiere's Enterprises and Truck Drivers, Warehousemen and Helpers Local #340, a/w International Brotherhood of Teamsters, AFL-CIO.¹ Cases 1-CA-22854, 1-CA-22977, and 1-CA-23395

November 12, 1991

**SUPPLEMENTAL DECISION AND ORDER
REMANDING**

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On February 28, 1990, the National Labor Relations Board issued a Decision and Order² in the above-entitled proceeding in which the Board found that the Respondent had violated Section 8(a)(5) and (1) of the National Labor Relations Act by withdrawing recognition from the Union and by denying the Union's business representative access to the plant for the purpose of investigating a grievance, and violated Section 8(a)(1) by interfering with the enforcement of the union-security clause. The Board ordered that the Respondent cease and desist therefrom and take certain affirmative action including, inter alia, recognizing and bargaining with the Union to remedy the unfair labor practices.

Thereafter, the Board applied to the United States Court of Appeals for the First Circuit for enforcement of its Order. On May 22, 1991, the court issued its decision in which it upheld the Board's unfair labor practice findings, but refused to enforce the Board's bargaining order.³ In footnote 11 of its opinion, the court stated: "[P]resumably on remand, the Board will wish to modify its remedy by requiring an election." On June 21, 1991, the court issued its judgment in which it remanded the Order to the Board "to determine the appropriate remedy for [the] unfair labor practices, given the conclusions and reasoning of the court in its opinion."

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has accepted the court's remand as the law of the case. Having duly considered the matter, including statements of position filed by the Charging Party and the Respondent, this proceeding is remanded to the Regional Director for Region 1 to arrange an election. In arranging and conducting the election, the Regional Director shall proceed pursuant to the Board's remedial authority under Section 10(c) of the Act. Cf. *Bowman Transportation*, 120 NLRB 1147

(1958). Further, in accord with the court's directive, we vacate the Board's prior Order in this case, and substitute the revised Order set forth in full below in order to remedy the unfair labor practices in a manner consistent with the conclusions and reasoning of the court.

ORDER

The National Labor Relations Board orders that the Respondent, Laverdiere's Enterprises, Winslow, Maine, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Denying any valid exclusive bargaining representative access to the plant pursuant to the terms of an expired collective-bargaining agreement without first bargaining in good faith with the Union to an agreement or to an impasse.

(b) Interfering with the enforcement of a valid union-security clause.

(c) Refusing to recognize and bargain with any valid exclusive bargaining representative in the following appropriate unit:

All full-time and regular part-time warehouse employees employed by the Employer at its Winslow, Maine warehouse, excluding all office clerical employees, salespeople, pharmacy marking employees, printing employees, return room employees, building maintenance employees, guards and supervisors as defined in the Act.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility in Winslow, Maine, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the above-entitled proceeding is remanded to the Regional Director for Region 1 for an election in accordance with the court's opinion.

¹ The name of the Charging Party has been changed to reflect the new official name of the International Union.

² 297 NLRB 826 (1990).

³ 933 F.2d 1045.

APPENDIX

NOTICE TO EMPLOYEES
POSTED PURSUANT TO A JUDGMENT OF THE
UNITED STATES COURT OF APPEALS ENFORCING
IN PART AND DENYING IN PART AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

The United States Court of Appeals has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the National Labor Relations Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT deny any valid exclusive bargaining representative access to the plant pursuant to the terms of an expired collective-bargaining agreement without bargaining in good faith with the Union to an agreement or to an impasse.

WE WILL NOT interfere with the enforcement of a valid union-security clause.

WE WILL NOT refuse to recognize and bargain with any valid exclusive bargaining representative in the following appropriate unit:

All full-time and regular part-time warehouse employees employed by us at the Winslow, Maine warehouse, excluding all office clerical employees, salespeople, pharmacy marking employees, printing employees, return room employees, building maintenance employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you under Section 7 of the National Labor Relations Act.

The United States Court of Appeals has also found that we do not have the duty to bargain with Truck Drivers, Warehousemen and Helpers Local #340, a/w the International Brotherhood of Teamsters, AFL-CIO unless or until an election is held in which a majority of our employees in the bargaining unit vote to select that Union as their bargaining representative.

LAVERDIERE'S ENTERPRISES